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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION FIVE

In re F.M., a Person Coming Under  
the Juvenile Court Law.

CONTRA COSTA COUNTY  
CHILDREN AND FAMILY  
SERVICES BUREAU,

Plaintiff and Respondent,

v.

F.M.,

Defendant and Appellant.

A166867

(Contra Costa County  
Super. Ct. No. J21-00132)

In October 2022, following a hearing under Welfare and Institutions Code section 366.26,<sup>1</sup> the juvenile court terminated parental rights to F.M. (Minor), born in March 2021. Defendant and appellant F.M. (appellant), Minor's father, appealed, contending that plaintiff and respondent Contra Costa County Children and Family Services Bureau (Bureau) failed to comply with the inquiry requirements of the Indian Child Welfare Act

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<sup>1</sup> All undesignated statutory references are to the Welfare and Institutions Code.

(ICWA) (25 U.S.C. § 1901 et seq.). The Bureau concedes error and we conditionally reverse.

Following Minor's birth, the Bureau received a referral because Minor's mother allegedly tested positive for multiple substances during her pregnancy.<sup>2</sup> Minor's mother denied Indian<sup>3</sup> ancestry; appellant informed the Bureau's social worker that Minor had Indian ancestry but he was unsure which tribe. In March 2021, the Bureau filed a wardship petition under section 300, subdivision (b)(1) (risk of serious physical harm). At the April detention hearing, appellant stated he had Indian ancestry on both sides of his family, and the juvenile court asked him to provide the Bureau contact information for his relatives. The court found there was reason to believe Minor may be an Indian child and ordered the Bureau to conduct further inquiry as required by law.

In June 2021, the juvenile court sustained the petition in part. The Bureau's disposition report stated that appellant had been interviewed regarding possible Indian ancestry and that he said he did not have any tribal affiliation or enrollment, and did not know anyone who could provide additional information. The Bureau recommended that the court find the ICWA did not apply. At the July disposition hearing, the juvenile court found that the Bureau had "exercised due diligence" in following up on the ICWA issue and that the ICWA did not apply. The court continued out-of-home placement and ordered reunification services for the parents.

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<sup>2</sup> A detailed summary of the underlying facts and procedural history is unnecessary to resolution of the issue on appeal.

<sup>3</sup> "[B]ecause ICWA uses the term 'Indian,' we do the same for consistency, even though we recognize that other terms, such as 'Native American' or 'indigenous,' are preferred by many." (*In re Benjamin M.* (2021) 70 Cal.App.5th 735, 739, fn. 1.)

At the March 2022 six-month review hearing, the Bureau’s social worker testified she had received information that the paternal grandmother had Indian ancestry through a tribe in Mexico. At the end of the hearing, the juvenile court found Minor’s parents had failed to make substantive progress toward reunification and the court set a section 366.26 permanency planning hearing. At the end of the October section 366.26 hearing, the court found Minor was likely to be adopted and terminated parental rights.

On appeal, appellant contends the ICWA’s inquiry requirements were not satisfied. The ICWA requires that “[i]n any involuntary proceeding in a State court, where the court knows or has reason to know that an Indian child is involved, the party seeking the foster care placement of, or termination of parental rights to, an Indian child shall notify the parent or Indian custodian and the Indian child’s tribe . . . of the pending proceedings and of their right to intervention.” (25 U.S.C. § 1912, subd. (a).) The county welfare department is required to undertake an initial inquiry that “includes, but is not limited to, asking the child, parents, legal guardian, Indian custodian, extended family members, others who have an interest in the child, and the party reporting child abuse or neglect, whether the child is, or may be, an Indian child . . . .” (§ 224.2, subd. (b); see also *In re Dominick D.* (2022) 82 Cal.App.5th 560, 566 (*Dominick D.*)). The court and agency must make “further inquiry” if they have “reason to believe” an Indian child is involved. (§ 224.2, subd. (e).) Such inquiry “includes, but is not limited to” interviewing parents and extended family members, and contacting the Bureau of Indian Affairs and any tribes or persons that “may reasonably be expected to have information regarding the child’s membership status or eligibility.” (§ 224.2, subd. (e)(2); see also *Dominick D.*, at p. 566; Cal. Rules of Court, rule 5.481(a)(4).)

Appellant argues the Bureau failed to discharge its duty of initial inquiry because it failed to ask the paternal grandmother about her knowledge of Minor's Indian ancestry when the social worker met with her. (See *Dominick D.*, *supra*, 82 Cal.App.5th at p. 567.) Appellant contends that the juvenile court therefore erred in finding the Bureau complied with its duty of inquiry (*ibid.*) and that the error requires reversal (*In re Antonio R.* (2022) 76 Cal.App.5th 421, 435).

In a letter filed in lieu of a respondent's brief, the Bureau agrees "the record lacks proper documentation of the social worker's efforts to contact additional paternal relatives for whom she received contact information in order to complete a thorough ICWA inquiry regarding" Minor. The Bureau suggests that this court enter a conditional reversal of the order terminating parental rights and remand for compliance with the ICWA inquiry requirements. (*In re Francisco W.* (2006) 139 Cal.App.4th 695, 704–710.) The Bureau requests that this court direct that the judgment terminating parental rights be reinstated if Minor is not determined to be an Indian child. (*Ibid.*) The Bureau's suggestion is appropriate, and appellant also seeks a conditional reversal.

#### DISPOSITION

The judgment terminating parental rights is reversed and the case is remanded to the juvenile court with directions to order the Bureau to comply with the notice provisions of the ICWA, the relevant case law interpreting the ICWA, and the views expressed in this opinion, and to file all required documentation with the juvenile court for the court's inspection. If, after proper notice, a tribe claims Minor is an Indian child, the juvenile court shall proceed in conformity with all provisions of the ICWA. If, on the other hand,

no tribe claims that Minor is an Indian child, the judgment terminating parental rights shall be reinstated.

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SIMONS, J.

We concur.

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JACKSON, P. J.

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BURNS, J.

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